



July 27, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: WT 11-65, Applications of AT&T Inc. and Deutsche Telekom AG For Consent To Assign or Transfer Control of Licenses and Authorizations

Dear Ms. Dortch:

On July 26, Harold Feld and John Bergmayer of Public Knowledge (PK) met with Mark Stone and James Bangasser of Commissioner Copps' office to discuss why the Commission should block the proposed merger between AT&T T-Mobile.

PK noted that Section 314 of the Communications Act presents a bar to the merger. Under that provision, it is unlawful for any entity engaged in wired or wireless communications to acquire any other such entity when "the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce..." 47 USC § 314. Even as narrowly construed by the Commission, this merger triggers Section 314, as it involves a merger between an American and a foreign company, both of whom carry wired and wireless common carrier traffic internationally. The merger would create a GSM roaming monopoly—leaving AT&T as the only roaming partner available for regional or international GSM customers.¹ Foreign carriers have already submitted evidence that commerce between their countries and the US would be harmed by the proposed merger, because their customers would have to pay more to roam in the US or would not be able to roam at all. International carriers (particularly those in Canada and Latin America) that use HSPA+ technology on the AWS bands would be particularly harmed. Since roaming agreements are usually symmetric, American roamers abroad would also be harmed by the merger. They would pay higher fees that are the direct result of AT&T's market power at home. AT&T's incentive would be to increase the amount of money it collects, not to reduce the amount spent by its customers.

Since in some areas the number of national competitors engaged in international commerce would be reduced to just one, it is necessarily true that the amount of competition would be, at a minimum, substantially lessened. This merger would cause harms that go beyond those affecting international commerce but those harms alone are sufficient grounds to block the merger. The Commission should therefore find that Section 314 applies as a matter of law.

It is important to note that the rollout of LTE by both AT&T and Verizon as their next-generation network technology does nothing to solve the roaming problem. Even leaving aside the problems that will be faced by non-LTE roamers, AT&T and Verizon LTE phones will not

¹ LTE does nothing to abate the problem of roaming monopolies, since different carriers' LTE systems will not be interoperable. See Sascha Segal, *Verizon LTE Phones Probably Incompatible With AT&T*, PC MAG, July 14, 2011, <http://www.pcmag.com/article2/0,2817,2388526,00.asp>. Furthermore, dual-network phones are unlikely to be manufactured solely to making roaming easier.

be compatible with each other. AT&T customers will not be able to use Verizon LTE phones with their plans, and vice versa. Customers of neither carrier will be able to roam onto the other's network.² International or regional LTE customers might be able to roam onto only one, or none, of the nationwide LTE networks. Consumers will face higher equipment costs due to the smaller and more fragmented markets the carriers create, and dual-network phones are unlikely to come to market without buy-in from AT&T and Verizon. In short, by itself the transition to LTE is likely to complicate roaming—and elimination of T-Mobile will only exacerbate this.

Respectfully submitted,

/s John Bergmayer
Senior Staff Attorney
Public Knowledge

² Sascha Segan, *Verizon LTE Phones Probably Incompatible With AT&T*, PC MAG, July 14, 2011, <http://www.pcmag.com/article2/0,2817,2388526,00.asp>.